

## REMARKS

This Response is to the non-final Office Action mailed on June 29, 2006.

### I. STATUS OF THE CLAIMS

Claims 1 to 8, 18 to 31 and 61 to 65 (as renumbered) were canceled previously without prejudice or disclaimer. Claims 9, 32, 38, 45 and 55 (as renumbered) have been amended. The amendments add NO new matter as set forth below. It is believed that no fees are due in connection with this Response, however, please charge Deposit Account No. 02-1818 for any fees deemed owed.

### II. CLAIMS REJECTIONS

In the Office Action, Claims 9 to 17, 32 to 44 and 55 to 60 were rejected under 35 U.S.C. §112, first paragraph. Claims 9 to 12, 15 to 17, 32 to 41, 43 to 49 and 52 to 59 were rejected under § 103(a) as being obvious in view of Scholarly Review ASIAO Journal article authored by Roberts et al. ("the *Roberts Article*") and U.S. Patent No. 3,545,438 to DeVries ("DeVries"). Claims 13, 14, 42, 50, 51 and 60 were rejected under U.S.C. § 103(a) as being obvious over the *Roberts Article*, DeVries and in further view of U.S. Patent No. 5,631,025 to Shockley et al. ("Shockley").

Regarding the §112 rejection, Applicants respectfully traverse the finding in the Office Action that "the reservoir coupled fluidly to the cycler" and "communicating the container fluidly with a circulator" constitutes new matter. The Office Action recognizes that page 20, lines 20 to 21 teaches that the cycler operates with the pump. The Office Action then says that it is unclear if this is the same cycler described on pages 16 to 17 of the Specification.

Applicants point the Patent Office to page 16, line 12 of the original Specification which states:

As used herein, the term "cycler" or other like terms refers to a pressure driven, diaphragm-type volumetric displacement pump coupled to a fluid path or paths in any suitable manner such that fluid flow can be automatically controlled. The cycler can determine the volume of liquid delivered as the difference in the volume of a pumping chamber before and after a pumping stroke. The pumping chamber, in general, includes two parts separated by a flexible diaphragm with air on one side and fluid on the other. Increasing the air pressure pushes liquid out of the chamber expanding the volume on the air side.

In light of the above-quoted text, when the Specification states at page 20, line 18, "The fluid flow into or out of container 38 and in circulation along the fluid circuit can be controlled at any suitable flow rates and by any suitable type and number of pumps. The pumps can be couple to the system via a cycler". The "as used herein" language quoted above clearly instructs one of skill in the art that the "cycler" referenced at page 20, line 18, is the one quoted above, namely, the one at pages 16 to 17 of the Specification.

The above-quoted text teaches that the cycler is "coupled to a fluid path". The Specification also teaches that at page 20, line 4, that "a portion of the therapy fluid that has circulated along the fluid circuit can be pumped into the container 38....". Accordingly, it is well-established that the cycler is in fluid communication with not only the fluid path but also the reservoir or container 38. The above-quoted text also teaches that the cycler is "pressure driven" and includes a "diaphragm-type volumetric displacement pump." The cycler is therefore clearly a "circulator" of the therapy fluid. The Specification accordingly provides ample support for the language in the claims, and Applicants respectfully request that the §112 rejection be removed.

Regarding the §103 rejection the *Roberts Article* and *DeVries*, the *Roberts Article* admittedly does not teach the branched reservoir of the claims. It is also clear that the spent reservoir 44 of *DeVries* is a spillover tank and is not in controlled flow communication with a cycler or circulator. Valve 42 of *DeVries* is opened to allow fluid to gravity flow from deleting tank 36 to spent reservoir 44 (col. 4, line 19; col. 5, line 20). Valve 30 is opened to allow fluid to gravity flow from reservoir tank 16 to spent reservoir 44 (col. 2, line 39). Overflow fluid can also flow from reservoir tank 16 through overflow conduit 28 to spent reservoir 44. Cycler 64 of *DeVries* appears to be used only for valving (col. 3, line 18). Pump 50 pumps fluid from tank 16 to the patient (col. 3, line 69). Vacuum pump 32 applies a vacuum to tank 16, causing spent dialysate to be pulled from the patient filling deleting tank 36. Excess spent fluid then gravity flows to administration tank 16. Thus, none of the overflow paths to spent reservoir 44 is taught to be via a controlled flow rate of the presently presented claims. Spent reservoir 44 is simply a gravity fed tank. No flow control is taught.

Support for the new claims is found at least at col. 20, line 21:

In an embodiment, the flow of fluid into or out of the container can be controlled at a flow rate of about 75 ml/min while the flow of fluid circulating along the fluid circuit can be controlled at about 250 ml/min as shown in Fig. 3.

Applicants accordingly respectfully submit that the presently pending claims are each well-supported by the Specification, distinguished over the art, and in condition for allowance. The patentability of Claims 9, 32, 38, 45 and 55 over the Roberts Article and DeVries and rejection of the dependent claims over the *Roberts Article*, DeVries and Shockley renders moot the obviousness rejections of the claims depending from Claims 9, 32, 38, 45 and 55.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same. If questions arise during the examination of this application, Applicants requests that the Examiner contact Applicant's representative at the information provided below.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY: Robert W. Connors  
Robert W. Connors  
Reg. No. 46,639  
Cust. No.: 29200  
(312) 807-4214

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